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EXAMINER				
CLARK, GREGORY D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/553,123

**Applicant(s)**

PASBRIG, ERWIN

**Examiner**

GREGORY CLARK

**Art Unit**

4152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/14/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 10/14/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1-3, 10-13, 20, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bunin (4,911,304).**

**Regarding Claims 1, 3, 10, 12, 13, 25 and 26,** Bunin teaches a blister pack for tablets or similar article characterized by a 20 to 25 micron thick aluminum film (Column 2, line 33) which is uncoated one side and laminated (Column 2, lines 38-39) with a layer of 0.02 millimeters (20 microns) thick polyvinyl chloride (PVC) (Column 2, lines 38 and 39) on the other side. In general the aluminum used for blister pack selected so as to be of suitable hardness to allow for the protection for the enclosed tablets and soft enough to allow said tablets to be released when desired with reasonable applied pressure.

In general the aluminum used for blister pack selected so as to be of suitable hardness to allow for the protection for the enclosed tablets and soft enough to allow said tablets to be released when desired with reasonable applied pressure.

**Regarding Claim 2**, Bunin teaches the invention of claim 1. Bunin does not mention the hardness state of the aluminum used in blister pack construction.

In general the aluminum used for blister pack selected so as to be of suitable hardness to allow for the protection for the enclosed tablets and soft enough to allow said tablets to be released when desired with reasonable applied pressure.

**Regarding Claim 11**, Bunin teaches the invention of claim 1. Bunin also teaches that the plastics film (PVC) used for the plastic film portion of the blister pack (base) (Column 2, lines 18 and 19) is the same material (PVC) which is sealed (laminated) to the cover film (aluminum foil).

**Regarding Claim 20**, Bunin teaches the invention of claim 2. Bunin teaches a blister pack with an aluminum foil component having a thickness of 20 to 25 micron (Column 2, line 33).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 19, 24, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin (4,911,304).**

**Regarding Claim 19**, Bunin teaches the invention of claim 10. Bunin teaches a blister pack for tablets or similar article characterized by a 20 to 25 micron thick aluminum film (Column 2, line 33) which is uncoated one side and laminated (Column 2, lines 38-39) with a layer of 0.02 millimeters (20 microns) thick polyvinyl chloride (PVC) (Column 2, lines 38 and 39) on the other side. Bunin does not mention whether the plastic layer is applied with a paste method. Bunin uses the plastic film in the same manner as used by the applicant.

The portion of claim 19 which requires "pasted" is considered to be a product by process limitation and is not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113)).

**Regarding Claims 24 and 30**, Bunin and Davie teach the invention of claims 23. Bunin and Machbitz teach the invention of claim 29. Bunin does not mention the coating method used to apply a plastic film on either side of the aluminum film. Bunin teaches a blister pack for tablets or similar article characterized by a 20 to 25 micron thick aluminum film (Column 2, line 33) which is uncoated the first side and on the second side is laminated (Column 2, lines 38-39) with a plastic film layer of 0.02 millimeters (20 microns) thick polyvinyl chloride (PVC) (Column 2, lines 38 and 39). Bunin uses a plastic film in the same fashion as the applicant to form a blaster pack.

The portion of claims 24 and 30 which requires "extrusion lamination" is considered to be a product by process limitation and if not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

**Claims 4, 5, 21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin (4,911,304) in view of Poore (4,254,871).**

**Regarding Claim 4**, Bunin teaches the invention of claim 1. Bunin does not teach a blister pack comprising aluminum foil which on one side has been bonded to a protective lacquer layer. Poore teaches a blister pack comprising aluminum film that one side is coated with a protective lacquer (Column 6, line 3). Poore does not mention whether the lacquer is based on watery or organic solvents on the basis of nitrocellulose. It would have been obvious to someone of ordinary skill in the art at the time of the invention to use the protective lacquers used by Poore to prevent premature rupture of the aluminum film.

Bunin and Poore disclose the claimed invention except for a lacquer based on watery or organic solvents on the basis of nitrocellulose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate protective lacquer, since it has been held to be within the general skill of a worker in the art to select a known material (watery or organic solvents on the basis of nitrocellulose) on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

**Regarding 5**, Bunin and Poore teach the invention of claim 21. Poore teaches that the one side of the blister pack aluminum film can be coated with a protective lacquer (Column 6, line 3). Poore does not mention the coating weight of the protective lacquer. The lacquer used by Poore is used to protect the aluminum film in the same fashion as the applicant.

It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the coating weight of the protective lacquer 0.5 to 5 g/m<sup>2</sup> for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2<sup>nd</sup> 272, 205 USPQ 215 (CCPA 1980).

**Regarding Claim 21**, Bunin teaches the invention of claims 2 and 20. Bunin does not teach a blister pack comprising an aluminum foil which on one side has been coated with a protective lacquer. Poore teaches that the one side of the blister pack aluminum film can be coated with a protective lacquer (Column 6, line 3). Poore does not mention whether the lacquer is based on watery or organic solvents on the basis of nitrocellulose. The lacquer used by Poore is used to protect the aluminum film in the same fashion as the applicant.

Bunin and Poore disclose the claimed invention except for a lacquer based on watery or organic solvents on the basis of nitrocellulose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate protective lacquer, since it has been held to be within the general skill of a



worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

**Regarding Claim 27**, Bunin teaches the invention of claim 26. Bunin does not mention a blister pack wherein a protective lacquer layer is bonded to aluminum foil. Poore teaches a blister pack pharmaceutical packages (Column 1, lines 1-5), characterized by a multilayer construction consisting of aluminum foil (sealing membrane) which is one side can have printing or protective lacquers (Column 5, lines 67-68; Column 6, lines 1-3). Poore does not mention whether the protective lacquer layer is based on watery or organic solvents. Poore uses the protective lacquer layer in the same fashion as the applicant.

Bunin and Poore disclose the claimed invention except for a lacquer based on watery or organic solvents on the basis of nitrocellulose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate protective lacquer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

**Claims 9, 14, 15, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin (4,911,304) in view of Ludemann (6,006,913).**

**Regarding Claim 9**, Bunin teaches the invention of claim 1. Bunin does not teach a blister pack comprising aluminum bonded to a protect lacquer layer. Ludemann teaches a blister pack characterized by aluminum foil (push-through layer, Column 1, line 55) which on one side has been bonded to a protective layer (sealing layer) which includes PVC, polystyrene, styrene copolymers, polyester, and polyolefins (Column 3, lines 61-66). Ludemann does not mention how the protective lacquer layer is bonded to the aluminum foil. Ludemann teaches that the protective layer ensures a permanent connection between the aluminum foil (push-through layer) and the packaging lower part (Column 3, lines 4-6).

It would have been obvious to some one of ordinary skill in the art at the time of the invention to combine the protective layer of Ludemann with the unprotected aluminum taught by Bunin since Ludemann indicates that issue related to low puncture resistance of the aluminum is decreased by the protective layer (Column 4, lines 45-47).

The portion of claim 9 which requires "extrusion lamination" is considered to be a product by process limitation and is not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed

product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

**Regarding Claims 14**, Bunin teaches the invention of claims 10 and 26. Bunin does not teach a blister pack comprising aluminum bonded to a protect lacquer layer. Ludemann teaches a Blister pack characterized by aluminum foil (push-through layer, Column 1, line 55) backing sheet (column 1, lines 11-19) which on one side has been bonded to a protective lacquer layer (sealing layer) which can includes PVC, polystyrene, styrene copolymers, polyester , and polyolefins (Column 3, lines 61-66). Ludemann does not mention whether the protective lacquer is watery or organic solvent based. Ludemann uses the protective lacquer layer in the same fashion as the applicant.

Bunin and Ludemann disclose the claimed invention except for a lacquer based on watery or organic solvents on the basis of nitrocellulose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate protective lacquer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

**Regarding Claim 15**, Bunin and Ludemann teach the invention of claim 14.

Ludemann does not teach the coating weight of the protective (seal) layer. Ludemann uses similar protective layer materials (polyester, Column 3, lines 61-66) in the same manner in the blister pack assembly as the applicant.

It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust coating weight of the protective layer to 0.5 to 5g/m<sup>2</sup> for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2<sup>nd</sup> 272, 205 USPQ 215 (CCPA 1980).

**Regarding Claim 19**, Bunin teaches the invention of claims 10. Bunin does not teach a blister pack with a protective layer applied to the aluminum foil. Ludemann teaches blister pack with a protective layer (sealing layer) which can be applied to the aluminum foil which include PVC, polystyrene, styrene copolymers, polyester, and polyolefins (Column 3, lines 61-66). Ludemann teaches that the sealing layer (protective layer) ensures a firm and permanent connection between the metal foil (push-through layer) layer and packaging lower part (Column 3, lines 4-6).

The portion of claim 19 which requires "pasted" is considered to be a product by process limitation and if not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is

based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

**Claims 6- 8, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin (4,911,304) in view of Davie (4,125,190).**

**Regarding Claims 6,** Bunin teaches the invention of claim 1. Bunin does not teach a blister pack that comprises an aluminum foil which on one side is bonded to a paper layer. Davie teaches a blister pack (Column 1, lines 1-5) that comprises an aluminum foil which on one side is bonded to a paper layer. Davie uses paper in essentially the same fashion as the applicant to protect the aluminum foil. Davie does not give the type of paper used. Davie teaches the aluminum foils that are backed by a paper layer are considered to be more supported (Column 1, line 23). It would have been obvious to a person of ordinary skill in the art at the time of the invention to

combine the blister pack of Bunin with the blister pack of Davie utilizing aluminum bonded to a paper layer so that the articles in the blister pack can be better supported. (Davie, Column 1, line 23)

Bunin and Davie discloses the claimed invention except for mentioning the type of paper used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate type of paper, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

**Regarding Claim 7**, Bunin and Davie teach the invention of claim 6. Bunin does not teach a blister pack that comprises an aluminum foil which on one side is bonded to a paper layer. Davie teaches a blister pack (Column 1, lines 1-5) that comprises an aluminum foil which on one side is bonded to a paper layer. Davie uses paper in essentially the same fashion as the applicant to protect the aluminum foil. Davie does not give the weight of the paper layer.

Bunin and Davie discloses the claimed invention except for disclosing the type of paper and the weight of the paper layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the weight of the paper layer, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

**Regarding Claim 8**, Bunin teaches the invention of claim 1. Davie teaches a blister pack comprising an aluminum which on one side has bonded to a paper layer. Davie does not mention how the paper layer is bonded to the aluminum foil. Davie used the paper layer in the same fashion as the applicant.

The portion of claim 8 which requires “pasted” is considered to be a product by process limitation and is not given patentable weight. “Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

**Regarding Claim 23**, Bunin teaches the invention of claims 20. Bunin does not teach a blister pack comprising an aluminum layer which on one side bonded to a

protective paper or polyester film. Davie teaches a blister pack (Column 1, lines 1-5) which comprises an aluminum foil which on one side is bonded to a paper layer (column 1, line 22).

Davie does not mention the whether the protective paper or polyester film is applied to the aluminum film based on a paste.

The portion of claim 23 which requires "pasted" is considered to be a product by process limitation and if not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

**Claims 16-18, 22, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin (4,911,304) in view of over Machbitz (4,429,792).**



**Regarding Claims 16, 22, 28,** Bunin teaches the invention of claims 10, 20, 26.

Bunin does not teach a blister pack where in paper is adhered to the aluminum foil. Machbitz teaches a blister pack with an aluminum foil bonded to a paper layer (Column 4, lines 32-33). Machbitz does not mention the type of paper or the method by which the paper is applied in the blister pack construction. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the blister pack of Bunin with the coating of Machbitz, because the foil bonded to the paper layer is strong enough to withstand the stress imparted by an automatic printer and frangible enough so that pills can be ejected during use (Column 4, lines 37-40).

Regarding the coating weight, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the coating weight of for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2<sup>nd</sup> 272, 205 USPQ 215 (CCPA 1980).

**Regarding Claim 17,** Buin and Machbitz teach the invention of claim 16.

Machbitz teaches a blister pack with an aluminum foil bonded to a paper layer (Column 3, lines 26-33). Machbitz does not mention the substance weight of the paper layer.

It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the coating weight of the paper layer for the intended application, since it has been held that discovering an optimum value of a result effective variable

involves only routine skill in the art. In re Boesch, 617 F.2<sup>nd</sup> 272, 205 USPQ 215 (CCPA 1980).

**Regarding Claims 18**, Bunin teaches the invention of claims 10. Bunin does not teach a blister pack comprising aluminum foil which on one side has been bonded to a paper or polyester film. Machbitz teaches a blister pack with an aluminum foil which on one side is bonded to a paper layer (Column 3, lines 26-33). Machbitz does not mention whether the paper layer is bonded to the aluminum film on the basis of a paste.

The portion of claim 18 which requires "pasted" is considered to be a product by process limitation and if not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113)).

**Regarding Claim 29**, Bunin teaches the invention of claim 26. Bunin does not teach a blister pack where in paper is adhered to the aluminum foil. Machbitz teaches a blister pack with an aluminum foil bonded to a paper layer (Column 4, lines 32-33). Machbitz teaches the use of a heat activated adhesive (Column 4, lines 30 and 31). Machbitz does not mention whether the adhesive used to bond the paper layer to the aluminum film is watery, solvent-based or solvent-free. Machbitz uses an adhesive to bond the paper layer to the aluminum in the same fashion as the applicant.

Bunin and Machbitz discloses the claimed invention except for mentioning whether the paper layer is applied by a watery, solvent-based or solvent-free medium. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the appropriate medium of delivery for the paper layer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

The portion of claim 29 which requires "pasted" is considered to be a product by process limitation and if not given patentable weight. "Even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (*In re Thorpe*, 227 USPQ 964,966). Once the examiner provides a rationale tending to show that the claimed product appears to be

the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evident establishing an unobvious difference between the claimed product and the prior art product (in re Marosi, 710 F.2<sup>nd</sup>, 802, 218 USPQ 289, 292 (Fed. Cir. 1983, MPEP 2113).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY CLARK whose telephone number is (571)270-7087. The examiner can normally be reached on M-Th 7:00 AM to 5 PM Alternating Fri 7:30 AM to 4 PM and Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GDC

/Joseph S. Del Sole/  
Supervisory Patent Examiner, Art Unit 4152